

HUMAN SERVICES BOARD

INTRODUCTION

DISCUSSION

SRS represents that pursuant to statute (see *infra*) when the petitioner turned eighteen it destroyed the report of her

abuse that had been placed in its "registry". However, during the petitioner's years in SRS custody, SRS maintained a separate casework file on the petitioner that still exists. SRS has introduced some of the records in this file in the current Family Court proceedings involving the custody of the petitioner's own minor children.

In an Order dated November 24, 1999, the Family Court Judge presiding over that case denied the petitioner's motion to seal her SRS juvenile records and ruled, inter alia, that: " . . . evidence such as might be contained in the mother's own juvenile files customarily appears in recitations of family history in disposition reports, and is considered to be probative evidence as pertains to disposition."

SRS maintains that because the records at issue are not presently contained in the child abuse registry this is not an "expungement case" over which the Board has jurisdiction. The Department further argues that the Family Court has exclusive jurisdiction over juvenile matters pending before it.

33 V.S.A. § 4916(a) requires the commissioner of SRS to maintain a registry containing the written records of all substantiated investigations of child abuse initiated under the child abuse investigation statutes (33 V.S.A. § 4915). Section 4916 also provides:

(g) A person may, at any time, apply to the human services board for relief if he or she has reasonable cause to believe that the contents of the registry are being misused. All registry records relating to an individual child shall be destroyed when the child reaches the age of majority. . .

(h) A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is unsubstantiated or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the commissioner to establish that the record shall not be expunged.

In this case, SRS maintains, and the petitioner does not dispute, that pursuant to the above statutes it has destroyed all records of the report of child abuse involving the petitioner that was contained in the registry. The petitioner has not cited any provision that prevents or limits SRS from maintaining separate casework files on children in its custody. Nor does there appear to be any statute that would give the Human Services Board jurisdiction over the disposition of casework records SRS maintains pursuant to a child placed in its custody through a CHINS proceeding.

As noted above, the instant case arises from an ongoing CHINS proceeding in Family Court regarding the custody of the petitioner's children. Section 5503 of the Vermont CHINS statutes in Title 33 provides:

(a) The juvenile court shall have exclusive jurisdiction over all proceedings concerning any child who is or is alleged to be a delinquent child or a child in need of care or supervision brought under authority of this chapter, except as otherwise provided in this chapter.

(b) The orders of the juvenile court under the authority of this chapter shall take precedence over any order of any other court of this state except an order establishing child support, to the extent inconsistent therewith.

In this case it does not appear that the records in question are currently being maintained in the SRS registry. Moreover, a court of superior jurisdiction has ruled that they may be made available to that court. Although the Board finds certain aspects of this case troubling, it must be concluded that the Board has no jurisdiction to act on the petitioner's request that the records in question be destroyed.

ORDER

The Department's Motion to Dismiss the petitioner's appeal is granted.

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